Responses from the Department of Cultural Affairs and the Department of Revenue to Public Comments Received on ARC1836C and ARC1837C

This document contains responses from the Department of Revenue and the Department of Cultural Affairs to public comments received on ARC 1836C and ARC 1837C through March 23, 2015. An appendix of all public comments received as of March 23, 2015 is included. The appendix includes some public comments that were received on drafts of the proposed rules that the Departments shared with stakeholders prior to the publication of ARC 1836C and 1837C. The Departments have fully considered all written and oral submissions they have received regarding these rules.

In this document, the Departments respond to comments, recommendations, criticisms, and questions about the proposed rules. In many instances where the Departments disagree with comments or recommendations, the Departments explain the rationale behind the proposed rule. In instances where the Departments agreed with comments or recommendations, the Departments' response notes how the rule has been amended to address the concern. Throughout the public comments received, there were several statements that were not clearly tied to a specific rule. Where possible, the Departments have attempted to identify the rule that the comment appears to address, and responded accordingly. In instances where questions regarding significant issues were raised but not specifically directed at a rule, the Departments have responded to those questions. The Departments' responses provide additional explanation of the principal reasons for its actions.

Response to Email from Mary Ottoson, Hobart Restoration, dated December 23, 2014 (App. 001–002)

1. In response to the comment regarding the use of the term "maximum" in proposed Department of Cultural Affairs rule 223—48.23, *see* App. at 001, the Department has revised the proposed rule to delete the phrase "a maximum of".

2. In response to the comment on proposed subrule 223—48.24(1), *see* App. at 001,regarding what will happen to projects that cannot be registered in a given registration period because insufficient funding is available, *see* proposed subrule 223—48.31(7)(d). Such projects will be given additional points in future registration rounds in the event that a tiebreaker is necessary.

3. In response to the comment on proposed subrule 223—48.25(4), *see* App. at 001, the published version of the proposed rules do not contain a subrule 223—48.25(4), but, to answer the commenter's question regarding whether an applicant must have a Part 2 application approved prior to submitting a registration application, the answer is yes. *See* subrule 223—48.25(3)(d), and rule 223—48.31.

4. In response to the comment on proposed rule 223—48.26, *see* App. at 001, subrule 48.26(2) addresses the commenter's concern that multiple applications for a single property under the small project fund could create a loophole for large projects that wish to avoid the large project registration process. The proposed rule addresses this concern by limiting the cumulative total award for multiple applications to $750,000, which is the small project cap.

5. In response to the comment regarding the notarization requirement in proposed subrule 223—48.27(2), *see* App. at 001, the Department of Cultural Affairs has amended the subrule to remove the notarization requirement.

6. In response to the comment on proposed subrule 223—48.27(3) regarding retroactive applications, *see* App. at 001, the limitation stated in the subrule has been amended to clarify that applicants are prohibited from entering the application process by submitting a Part 1 application if *all* work on the project has been completed and the project has been placed in service. This will ensure that the Department of Cultural Affairs has the opportunity to review the eligibility of property and that the proposed work meets the statutory requirements. Applicants with an approved Part 1 and Part 2 application are permitted to begin construction prior to submitting a registration application or entering into an agreement with the Department, and such work may be eligible for the tax credit, although, applicants who chose to proceed without a valid tax credit agreement do so at their own risk and may not receive tax credits.

7. In response to the comment on proposed subrule 223—48.30(1)(b) regarding how an applicant can plan to apply for federal credits but also provide an approved federal Part 2 application, *see* App. at 001, the phrase "plans to apply" is used to reflect the fact that the federal Part 1, 2, and 3 applications are preparatory to the federal tax credit application with the IRS. In regards to the comment that requiring an approved federal Part 2 application is not okay, *see* App. at 001, the subrule only requires an approved Part 2 from an applicant that is not the fee simple owner of the property. This rule is intended

to ensure that the applicant is an "eligible taxpayer", as required by Iowa Code section 404A.3(1)(a) (2015). An "eligible taxpayer" must either be "the owner of the property or another person that will qualify for the federal rehabilitation credit…" Iowa Code § 404A.1(3) (2015). Requiring an applicant that is not the fee simple owner to provide an approved federal Part 2 application will help the Department verify that the applicant is an eligible taxpayer as required by the statute.

8. In response to the comment on proposed subrule 223—48.31(2), *see* App. at 001, the proposed subrule has been amended to clarify that the Department of Cultural Affairs may hold more than one registration period. The proposed subrule does not make multiple registration periods mandatory because there may not be sufficient funding in a given year to warrant multiple registration periods. In addition, the statutory language on multiple registration periods is permissive, not mandatory. *See* Iowa Code § 404A.3(1)(b) (2015). In response to the commenter's concern that one annual registration application will cause unacceptable delays, proposed subrule 223—48.31(5) indicates that the Department will adhere as closely as possible to a 30–day review period and 15-day notification, and will not limit communication to once per year.

9. In response to the comment on proposed subrule 223—48.31(6)(b), and the use of Secured Financing as a scoring criterion, *see* App. at 001, it is the Department of Cultural Affairs' position that this criterion is supported by the statute. One of the items that the Department is required to review as part of the application process is the "amount and source of all funding." Iowa Code § 404A.3(1)(c) (2015). In addition, one of the statutory requirements of the agreement is "the budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, allowable cost overruns, and the source and amount of all funding received or anticipated to be received…." Iowa Code § 404A.3(3)(b)(3) (2015). Finally, the statute also requires that a project be completed within "thirty-six months of the commencement date" and the "commencement date… shall not be later than the end of the fiscal year in which the agreement is entered into." Evaluating secured financing will enable the Department to improve the likelihood that awarded projects are able to meet the statutory obligations. To the extent that it is difficult for all projects to secure financing as the comment suggests, then all applications will simply receive fewer points for secured financing, thus reducing the impact of this criteria on final award decisions. *See also* response 27.

10. In response to the comment on proposed subrule 223—48.31(6)(c), regarding giving more points to applicants that currently own the building, *see* App. at 001, like the secured financing criterion discussed in response 9, the ownership criteria is used to evaluate the likelihood that the project will be able to meet the statutory requirements. An applicant that already owns the property is more likely to be able to start the project quickly and meet the statutory project completion deadlines. In addition, information about ownership is also relevant to whether the applicant is an "eligible taxpayer" as required by the law. To be an eligible taxpayer, the applicant must either be "the owner of the property or another person that *will* qualify for the federal rehabilitation credit…." Iowa Code section 404A.1(3) (2015) (emphasis added). Ownership status is relevant determining which category of "eligible taxpayers" applies to the applicant. *See also* response 27.

11. In response to the comment on proposed subrule 223—48.31(6)(f), *see* App. at 002, like the criteria mentioned in responses 9 and 10, how far along an applicant is in the zoning process is relevant to the likelihood that the project will be ready to move forward quickly once the credit is awarded and therefore affects the likelihood that the project will be able to meet the statutory requirements for project completion. *See also* response 27.

12. In response to the comment on proposed subrule 223—48.31(7)(d), that previous applications should take priority over economic priorities and vacant properties, *see* App. at 002, the Department of Cultural Affairs carefully considered the weight that should be given to previous applications and determined that it should be part of the tiebreaking scoring criteria rather than part of the initial scoring criteria described in proposed subrule 48.31(6) because, the fact that the applicant has submitted a prior application should not take precedence over how ready a project is to proceed. *See also* response 27.

13. In response to the comment on proposed subrule 223—48.31(8), regarding whether a list of registered projects will be made public, *see* App. at 002, the proposed subrule has been amended to specify that a list of registered projects will be posted on the Department's website.

Response to Email from Jim Hobart, Hobart Historic Restoration, dated December 26, 2014 (App. 003)

14. The comment raises general concerns about the need for multiple registration periods as well as the need to keep project costs at a minimum prior to Part 2 approval. Regarding the need for multiple registration periods, *see* response 8.

Response to Email from Lois and Carol Priester dated January 1, 2015 (App. 004)

15. In response to the comment on proposed subrule 223—48.33(1) regarding timing of the Part 3 submission when portions of a building are placed in service at different times, *see* App. at 004, the Department of Cultural Affairs has amended the proposed rule to require submission 180 days after the project completion date as defined in the agreement.

16. Regarding the comment on the proper tax treatment of grant dollars which the commenter did not attribute to a particular subrule but appears to be related to Department of Revenue subrule 701—42.54(3), *see* App. at 004, the Department has amended the relevant proposed language to include only the language in Iowa Code section 404A.1(6)(b) (2015). Applicants must ensure that the tax treatment of grant dollars, as well as any other public financing, complies with the Iowa statute, which incorporates by reference federal tax law.

Response to Email from Rebecca McCarley dated January 15, 2015 (App. 005-007)

17. The commenter's email is primarily about the possibility of legislative changes and the possibility of funding the Historic Site Preservation Grant Program. However, the commenter raises questions about non-owner applicants, such as nonprofits working with government entities, and whether the non-owner applicant issue has been addressed

administratively. Under Iowa Code section 404A.3(1) (2015), only an eligible taxpayer can apply for the tax credit. *See* response 7 for further information on who may be an eligible taxpayer. *See* proposed rule 223—48.27 for additional information on who may apply for the tax credit, including the requirements for nonprofits and the prohibition on government entities. The proposed rule and related restrictions are based on and consistent with the definitions of "eligible taxpayer," "nonprofit organization," and "qualified rehabilitation expenditures" in Iowa Code section 404A.1 (2015).

Response to Email from Jack Ewing, Legislative Services Agency, dated February 3, 2015 (App. 008)

18. In response to the comment recommending the Department of Cultural Affairs specify its fees in rule, the Department has amended rule 223—48.34 to specify fee amounts.

Response to Email and Related Attachments from David Adelman, the Smart Growth Coalition dated February 3, 2015 (App. 009-018)

19. In response to what the commenter refers to as Issue 1, *see* App. at 010–012, first, neither the Department of Cultural Affairs nor the Department of Revenue is aware of the projects the Smart Growth Coalition believes have been challenged to date under the 2014 amendment based on their use of public financing sources. To date, no awards have been made to projects that are governed by the 2014 law change, therefore the Coalition's assumption is not correct. Projects for which tax credits were reserved prior to July 1, 2014 continue to be governed by the law as written prior to July 1, 2014 and the related administrative rules.

    The Department also disagrees with the calculations presented in the Coalition's example under Issue 1. The Coalition presented an example where it claimed that expenses paid for with: federal historic tax credits, federal low income housing tax credits, tax increment financing (TIF) payments, and taxable city grants would all be eligible for the federal historic rehabilitation tax credit but that those same expenses would not be eligible for the state historic tax credit based on the Department's proposed rules. *See* App. at 010–012. The Coalition's example and assumptions are inaccurate. The Departments agree with the Coalition that, under Iowa Code section 404A.1, expenditures financed with federal, state or local government grants and forgivable loans are eligible for the state tax credit to the extent they are eligible under IRC section 47. Federal low income housing tax credits are typically not excluded from basis when calculating the federal historic tax credit under IRC section 47. As such, those amounts are not typically excluded from the basis for the Iowa historic tax credit either; nor is the amount of the federal historic tax credit. In addition, under Iowa Code chapter 404A (as it existed prior to July 1, 2014 and currently) and the proposed rules, TIF payments and a taxable city grant will not reduce basis if they are treated as taxable income. Therefore, assuming that the costs are the types of expenses that meet the requirements of QREs under section 47, there would not be a difference between the expenses eligible for the federal credit and the expenses eligible for the state credit. The Department has made

changes to the proposed rules to clarify this issue, though not the changes proposed in the Coalition's letter, *see* App. at 012.

The Coalition recommended that the Department of Cultural Affairs address its concern by removing the definitions of "government funds" or "funding originating from a government" from proposed rule 223—48.22. The Coalition also recommended that the requirement that such funding sources be reported be removed from subrules 223—48.31(3), 223—48.32(1)(d), and 223—48.33(2)(d). The Coalition suggested that it is unnecessary to require this information be reported and that removing the requirement would "ensure that section 47 of the Internal Revenue Code is followed." The Coalition also suggested that the information reporting requirements are unnecessary because the Department has the right to request further information. The Department of Cultural Affairs disagrees with the Coalition's assertion that removing the definitions and reporting requirements is the best way to ensure that the Department follows the federal law. Removing the reporting requirements does not address the Coalition's concern that the Department treat such dollars properly under the law. Removing the reporting requirements would only create a lack of transparency regarding the use of public dollars.

In addition, removing the definition and reporting requirements would inhibit the Department's ability to comply with its statutory requirements. Under Iowa Code section 404A.3(1)(c) (2015), applicants are required to provide "the amount and source of all funding for a rehabilitation project" as part of the registration process. Under section 404A.3(3)(b)(3), the agreement between the Department and the applicant must include "the source and amount of all funding received and anticipated to be received." Finally, Iowa Code section 404A.5 (2015) requires the Department of Cultural Affairs, in consultation with the Department of Revenue, to inform the General Assembly and the Legislative Services Agency about the economic impact of the program. Gathering information about the public funding sources received, both directly and indirectly by these projects, is necessary to satisfy all of these statutory requirements. *See also* response 50.

Rather than incorporating the Coalition's recommendation to remove the reporting requirements from the Department of Cultural Affairs rules, the Department of Revenue has addressed the Coalition's concern about the potential for inconsistencies with the federal law and its related regulations, by revising its proposed subrules 701—42.54(3) and 52.47(3) on the effects of public financing sources. The proposed rule now uses the language of Iowa Code section 404A.1(6)(b) (2015) to clarify that projects may include such expenses financed with public dollars, if they may include those expenses under the federal program. This was not a suggestion made in the February 3 email or related attachments from the Smart Growth Coalition, but is similar to a recommendation made by a member of the Coalition, *see* App. at 037. The Departments recognize that the business structures used in historic rehabilitation projects are complex and must be reviewed on a case-by-case basis under the referenced federal law, and its related regulations and guidance.

However, there are some applicants to which the federal guidance on public financing sources does not apply. As such, the Department of Revenue has included some additional language in the proposed rule to clarify how the statute applies to applicants that are not eligible for the federal program. The state program is broader than the federal program in that it permits owners of certain non-income producing properties, such as nonprofits and homeowners, to apply. *See* Iowa Code § 404A.1(7)(c) (2015) (identifying "property other than commercial property" in the description of qualified rehabilitation projects; *see also* § 404A.1(6)(a) (2015) indicating that nonprofits may be "eligible taxpayers."). The law states that "'Qualified rehabilitation expenditures' does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under section 47 of the Internal Revenue Code." Iowa Code § 404A.1(6)(b) (2015). Because the language is set out in its own paragraph, it applies to all applicants. Therefore, the Department has included language to clarify that applicants that are not eligible for the federal program cannot receive state tax credits for expenses paid for with federal, state or local government grants or forgivable loans because their expenses are not eligible under section 47.

20. In response to what the Coalition refers to as Issue 2, *see* App. at 012–013, the proposed rules provide different reporting requirements for eligible taxpayers that are fee simple owners and eligible taxpayers that will qualify for the federal credit because they are two different categories of persons that can apply for the tax credit and, information necessary to determine whether they are in fact eligible taxpayers is different from one another. Iowa Code section 404A.3(1)(c) (2015) states "[a]n applicant shall have the burden of proof to demonstrate to the department that the applicant is an eligible taxpayer…." The information required under the proposed rules is necessary to determine whether the applicant is in fact an eligible taxpayer. To the extent that the Coalition asserts that the rules should be changed because they do not match up with the federal requirements, the Departments disagree because there are differences between the federal program and state program that are relevant to this issue. The federal program does not include a requirement that applicants must be the "eligible taxpayer" as defined under the Iowa statute. Therefore, the requirements of the state program are necessarily different. *See also* response 133 and 164.

21. In response to what the Coalition refers to as Issue 3, *see* App. at 013, the Department of Cultural Affairs has amended the proposed rules to address the possibility of amendments to the Part 1 and has amended the language of the proposed rule on Part 2 amendments to use language similar to what the Coalition recommended. *See* proposed subrules 223—48.28(8) and 48.30(6).

22. In response to what the Coalition refers to as Issue 4, *see* App. at 013, and related comments from Hubbell Realty, *see* App. at 072, the Department of Cultural Affairs has amended subrules 48.31(4)(a)(1) and (3). Specifically, the Department is clarifying 223—48.31(4)(a)(1) by expressly stating that an applicant's requirement to answer the Department's questions and provide information to the Department is based on deadlines in the rules and application and, if applicable, requests for information from the Department. The change, to include information and documents "as requested by the Department" also accommodates changes to subrules 48.28(5) and 48.30(4) that provide for notice from the Department if a Part 1 or Part 2 application is incomplete. The

Department has also amended subrule 48.31(4)(a)(3) to clarify that it does not apply to persons or entities that have filed extensions to file tax returns.

The Department received comments requesting other provisions in the certification and release of information section of the rules be modified. The statute requires the Department and the successfully registered eligible taxpayer to enter an agreement that contains "mutually agreeable terms and conditions." Iowa Code § 404A.3(3)(b) (2015). The certification and release rules list a variety of circumstances that could have adverse consequences for a project and that would cause the Department to decline to contract with an applicant. It is reasonable and consistent with the statute for the Department to put applicants on notice through rulemaking of those grounds that will cause the Department to refuse to move a project onto the contracting phase of the program.

Several other state grant and tax credit contracts contain restrictions on many of these same topics. This includes requirements to provide complete and truthful information, to file and pay taxes imposed by any jurisdiction, to comply with all applicable laws, to comply with other state contracts, and to provide other valuable representations and warranties.

Many "eligible taxpayers" under the program will be single purpose business entities, created specifically for rehabilitation of a single building. Obtaining information solely about recently-created single purpose entities provides the Department no information relevant to the quality of the promises, representations, and warranties provided in the contract. In order for the Department to obtain meaningful information, the Department requests information about persons and entities related to the applicant. This information is further relevant because these related persons and entities may be jointly and severally liable with the applicant if there is "a breach or default under the agreement with the department, the violation of any warranty provided by the eligible taxpayer to the department or the department of revenue, the claiming of a" state historic tax credit "for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of" Chapter 404A or the program's administrative rules, "misrepresentation, fraud, or any other unlawful act or omission." *See* Iowa Code 404A.3(4)(c)(3)(a) (2015). The Department also reserves the right to demand information about other entities and persons related to the applicant, related persons, or related entities. This is because the Department cannot contemplate all the interrelated business entities that may be created for a project and applicants should not be permitted to disguise the individuals or established entities involved with a project by the creation of layers of business entities. The Department has a right to know what individuals and entities are involved with a project, any factors that could have adverse consequences for the project, and the quality of all promises, representations, and warranties before the Department proceeds to offer a contract to an applicant. Overall, the grounds in the certification and release provision relate to the Department's effort to select applicants best able to comply with the statute and contract and the Department's effort to be a good steward of significant public resources involved in this refundable or transferable tax credit program.

The Department received a comment that applicants may not be able to disclose information about related persons and entities. *See* App. at 016. The Department has amended subrule 48.31(4) to require the applicant to update the information disclosed

under subrule 48.31(4) when the information changes. Therefore, if the applicant receives new, different, or updated information, the applicant can update its response to the Department.

One comment requested the Department's determinations under the certification and release rule be modified repeatedly by adding a requirement to act "reasonably." *See* App. at 119–20. The Department is already required to avoid acting unreasonably, arbitrarily, or capriciously. *See* Iowa Code § 17A.19(10)(n) (2015). Furthermore, the Department is not changing the introductory sentence of subrule 48.31(4)(a) from "shall reject" to "may reject." Keeping the requirement to reject applicants on these enumerated grounds will make the Department's decisions under this rule more uniform. Furthermore, in light of the valuable tax benefits conferred by the program, it is reasonable to require the individuals and entities that will benefit economically from a state historic tax credit award to first make sure they are in good standing with government entities, including that they do not currently owe taxes or other amounts to the government. Outstanding debts owed to taxing authorities and other government entities can constitute liens on some or all property of the debtor. *See, e.g*, Iowa Code § 422.26 (2015). Such matters should be resolved before the State of Iowa dedicates public resources that will benefit persons or entities with such outstanding issues.

23. In response to what the Coalition refers to as Issue 5, notification of incomplete information, *see* App. at 013, the Department of Cultural Affairs has amended proposed subrules 223—48.28(5) and 48.30(4) to specify that the Department will notify the applicant if the application is incomplete.

24. In response to what the Coalition refers to as Issue 6, *see* App. at 014, the Department of Cultural Affairs disagrees with the Coalition's recommendation that the additional scoring criteria identified in proposed subrule 223—48.31(7) be removed because it is not endorsed by the statute. Under the statute, the Department has broad authority to request information from the taxpayer, and because the legislative changes enacted last year eliminated the lottery based system, there must be a mechanism for evaluating projects in the event of a tie when there is insufficient funding available under the annual program cap. The qualitative information included in proposed subrule 223—48.31(7) will only be considered when there is insufficient funding to fund two or more of the lowest scoring projects. In addition, the criteria selected are in line with the Department's Statewide Preservation Plan. And, the Coalition has not suggested any alternative means of breaking a tie between eligible projects in the event of insufficient funds.

25. In response to item 1 on the spreadsheet submitted by the Coalition, *see* App. at 015, the Department of Cultural Affairs does contemplate multiple registration periods. *See* response 8.

26. Item 2 on the spreadsheet, *see* App. at 015, is related to the Registration Application and does not have a corresponding rule. No response is necessary.

27. In response to item 3 on the spreadsheet submitted by the Coalition, that the application scoring system is not permitted by Iowa Code chapter 404A (2015), *see* App. at 015, the

Department disagrees. The application process, including scoring the applicants in the manner embodied in the rules, is authorized with Iowa Code chapter 404A (2015).

Iowa Code section 404A.3(1)(a) requires eligible taxpayers who seek state historic tax credits to "make an application to the department in the manner prescribed by the department." Iowa Code § 404A.3(1)(a) (2015). "The application shall include any information deemed necessary by the department to evaluate eligibility under the program of the applicant and the rehabilitation project, the amount of projected qualified rehabilitation expenditures of a rehabilitation project, and the amount and source of all funding for a rehabilitation project." Iowa Code § 404A.3(1)(c) (2015). The applicant has the burden prove it is an eligible taxpayer and the project is a qualified rehabilitation project. *Id.* After the Department of Cultural Affairs reviews an application, the Department "may" register a project under the program. Iowa Code § 404A.3(2)(a) (2015).

Iowa Code section 404A.3(3)(a) requires successful applicants to enter an agreement with the Department "for the successful completion of all requirements of the program." The department and the eligible taxpayer must mutually agree to the terms and conditions of the required contract. Iowa Code § 404A.3(3)(a) (2015). The statute contains certain minimum terms and conditions that must be included in any contract under the program. *See* Iowa Code § 404A.3(3)(b) (2015). These mandatory provisions include setting a project start date no later than "the end of the fiscal year in which the agreement is entered into," a maximum 3-year completion date, the budget (including maximum cost overrun provisions), and the amount of the tax credit award (which is subject to compliance with the statute and contract and verification by the Department). Iowa Code § 404A.3(3)(b) (2015).

The Department's scoring criteria is focused on project readiness. Furthermore, the Department's annual tax credit awards are capped. *See* Iowa Code § 404A.4(1)(a) (2015). The Department has discretion to register projects. *See* Iowa Code § 404A.3(2)(a) (2015). The Department has authority to prescribe the parameters of the application process. Iowa Code § 404A.3(1) (2015). Successfully registered projects will be required to satisfy the elements of the contract and the compliance and examination provisions of the statute before they have any right to claim or receive a state historic tax credit. Iowa Code § 404A.3(3)(b)(1) (2015). In light of the Department's authority and the requirements of the program, it is reasonable for the Department to prioritize its annual allocation by first registering the projects that are most ready and appear to be in the best position to satisfy the contractual and statutory duties necessary to claim or receive a state historic tax credit.

28. In response to item 4 on the spreadsheet, *see* App. at 015, *see* response 27.

29. In response to item 5 on the spreadsheet, *see* App. at 015, *see* responses 8 and 27.

30. In response to item 6 on the spreadsheet, *see* App. at 015, *see* response 27.

31. In response to item 7 on the spreadsheet, *see* App. at 015, *see* response 27.

32. In response to item 8 on the spreadsheet, *see* App. at 015, *see* responses 11 and 27.

33. In response to item 9 on the spreadsheet, *see* App. at 015, *see* responses 20 and 27.

34. In response to item 10 on the spreadsheet, *see* App. at 016, is related to the Registration Application and does not have a corresponding rule. The Department of Cultural Affairs is willing to consider a revision to the application if the applicant can provide recommended language.

35. In response to item 11 on the spreadsheet, *see* App. at 016, *see* response 25.

36. In response to item 12 on the spreadsheet, *see* App. at 016, *see* response 22.

37. In response to item 13 on the spreadsheet, *see* App. at 016, *see* response 22.

38. In response to item 14 on the spreadsheet, *see* App. at 016, *see* response 22.

39. In response to item 15 on the spreadsheet, *see* App. at 016, *see* response 22.

40. In response to item 16 on the spreadsheet, *see* App. at 016, *see* response 22.

41. In response to item 17 on the spreadsheet, *see* App. at 017, *see* response 19.

42. In response to item 18 on the spreadsheet, *see* App. at 017, subrule 223—48.6(8) is related to projects with tax credits reserved prior to July 1, 2014, which are governed by the law as in effect prior to that date. Therefore, it is not related to the definition of "qualifying transferee." In addition, it is not intended to imply that the statute of limitations begins to run with the issuance of the tax credit certificate rather than the filing of a return.

43. In response to item 19 on the spreadsheet, *see* App. at 017, it is unclear to what rule the comment refers.

44. In response to item 20 on the spreadsheet, *see* App. at 017, *see* response 27.

45. In response to item 21 on the spreadsheet, *see* App. at 017, the Department of Cultural Affairs disagrees with the comment's assertion that proposed rule 223—48.27 contains redundancies and inconsistencies and should state no more than what was in the first sentence of the proposed rule as published in ARC1836C. First, the comment does not specify what it views as redundancies and inconsistencies. Second, as for the suggestion that only the first sentence is necessary, the Department disagrees because the first sentence only describes who may be an "eligible taxpayer." The subrules the comment proposes to eliminate describe how an applicant may demonstrate that they are an eligible taxpayer and clarify who is not considered an eligible taxpayer. *See* responses 17 and 20 for further response.

46. In response to item 22 on the spreadsheet, *see* App. at 017, *see* response 20.

47. In response to item 23 on the spreadsheet, *see* App. at 018, *see* response 27.

48. In response to item 24 on the spreadsheet, *see* App. at 018, *see* response 8.

49. In response to item 25 on the spreadsheet, *see* App. at 018, the Department of Cultural Affairs has revised rule 223—48.32 to address the Coalition's concern about the 90-day closing period by extending the closing period to 120 days. The Department has addressed the Coalition's concern about finalizing project funding within the closing periods by striking the phrase "finalize project funding" from the proposed rule. However, financing remains a component of the scoring criteria. *See* responses 9 and 27.

Finally, the Department has addressed the Coalition's concern about a single annual registration period by clarifying subrule 223—48.31(2), to clarify that the department may hold multiple registration periods.

50. In response to item 26 on the spreadsheet, *see* App. at 018, the rule requiring information about the amounts paid for transferred tax credits is necessary to improve transparency, compliance efforts, and the accuracy of the Department of Revenue's data on the economic benefits of the tax credit program. Under Iowa Code sections 404A.2(3) and (5) (2015), the Department has broad authority to request information on a tax credit certificate or transferred tax credit and collecting the information contemplated by the rule is essential to the Department's statutory obligations. Iowa Code section 404A.5 (2015), requires the Department of Revenue to assist the Department of Cultural Affairs in keeping the General Assembly informed about the economic benefits of the tax credit program. The Department of Revenue also provides information to the legislative Tax Expenditure Committee to support its review obligations under Iowa Code section 2.48 (2015). In the past, the tax expenditure committee has specifically asked the Department of Revenue for information regarding the price of tax credits that are transferred. The Department of Revenue intends to collect this information for other transferable tax credit programs as well. Comparing this information across tax credit programs would permit the Department of Revenue to advise the General Assembly on whether the compliance and recapture provisions in chapter 404A impose a significant cost beyond the costs associated with other transferable tax credits. Furthermore, this information helps the agencies and the General Assembly assess the cost of encouraging historic rehabilitation through a tax credit program, rather than a grant program. All of these factors, and any other useful information obtained through this rule, may affect the agencies' statutory duty to provide recommendations regarding the scope of the program and whether adjustment should be made. *See* Iowa Code § 404A.5(3) (2015).

    The information is also related to assessing the cost of the income exclusion in Iowa Code section 404A.2(5)(c). Furthermore, transfers that are not for value subject the transferee to liability under Iowa Code section 404A.3(4)(c)(2), thus making the information relevant to compliance efforts.

51. In response to item 27 on the spreadsheet, *see* App. at 018, *see* response 19.

52. In response to item 28 on the spreadsheet, *see* App. at 018, proposed subrule 701—42.54(6) applies to actions taken by the Department of Revenue after the Department of Cultural Affairs issues a tax credit certificate.

Response to Email from Rebecca McCarley dated February 7, 2015 (App. 019–022)

53. In response to the comment regarding the definition of "applicant" as an "eligible taxpayer" in proposed rule 223—48.22, *see* App. at 019, the definition of applicant is restricted to "eligible taxpayer" because Iowa Code section 404A.3(1)(a) (2015) states that "an eligible taxpayer…shall make application to the department…." The commenter seems to suggest that the "eligible taxpayer" restriction may only need to apply the registration application and the agreement, but not the Part 1 and Part 2 application. Such an interpretation is not supported by the statute. Iowa Code section 404A.3(1)(b) (2015)

states, "the department may accept applications…or one or more components of an application…" this implies that the Part 1, Part 2, Registration Application, and Part 3 are all considered components of the same application. There does not appear to be any part of the application process contemplated by the statute that someone other than an eligible taxpayer may submit.

54. In response to the comment on the need to specify that barns are noncommercial property, *see* App. at 019, the Department of Cultural Affairs has amended the proposed definition of noncommercial property to address this concern. *See* proposed rule 223—48.22, definition of "noncommercial property."

55. In response to the commenter's question regarding whether, residential properties with two or fewer units are considered "commercial property," *see* App. at 019, the proposed rules address this issue in the proposed definition of "commercial property" under rule 223—48.22. The proposed definition cross references Department of Revenue Administrative Code chapter 701—71. Subrule 701—71.1(6) states, "Commercial realty shall also include hotels, motels, rest homes, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture."

56. In response to the comment on government funding, *see* App. at 019, *see* response 19.

57. In response to the comment on substantial rehabilitation, *see* App. at 019, *see* response 54.

58. In response to the comment on rule 223—48.23, *see* App. at 020, *see* response 1.

59. In response to the comment on rule 223—48.24, the management of the aggregate annual tax credits and the notion of reserving tax credits from future annual allocations, *see* App. at 020, under the new law, the Department of Cultural Affairs will no longer reserve tax credits from future year allocations. This practice caused inefficiencies and was intentionally eliminated by the legislature to address those inefficiencies. Under the new law, tax credits must be awarded subject to the rollover, reallocation, and annual limitations imposed by Iowa Code section 404A.4. To clarify this issue, subrule 223—48.24(3) has been added to the proposed rules to draw the reader's attention to Iowa Code section 404A.4 (2015).

60. In response to the comment on rule 223—48.25, *see* App. at 020, *see* response 53.

61. In response to the comment on rule 223—48.26, *see* App. at 020, *see* response 59. The applicable rollover and reallocation provisions are described in Iowa Code section 404A.4 (2015).

62. In response to the comment on rule 223—48.27, *see* App. at 020, *see* response 53. *See* also response 20 for further explanation.

63. In response to the comment on the wording of subrule 223—48.28(1), *see* App. at 020, the Department of Cultural Affairs has revised the introductory paragraph of rule 223—48.28 and subrule 223—48.28(1) to address the commenter's concern.

64. In response to the comment on the "eligible taxpayer" restriction in rule 223—48.28, *see* App. at 020, *see* response 53.

65. In response to the comment on subrule 223—48.28(5), *see* App. at 020, regarding the non-binding nature of the 90–day review period, it would not be prudent to make the stated review period a mandatory requirement. In addition, there is no statutory requirement that the Department of Cultural Affairs review the application within a specific period of time. While the Department recognizes the importance of a timely review to the applicant, to make the review period mandatory would require that there be a consequence in the event that the Department did not meet the mandatory timeline, such as automatic approval of the application. Such a consequence would be imprudent. Properties should not receive automatic approval simply because the Department may not review the project within a specific time period. All projects need thorough review.

66. In response to the comment on rule 223—48.29, *see* App. at 020, regarding the timing of the preapplication meeting, the proposed subrule states that a meeting *may* be requested any time after a Part 1 is submitted but that the meeting may *not* take place *fewer* than thirty days after the Part 1 submission. This limitation ensures that the Department of Cultural Affairs will have time to review the Part 1 application prior to the pre-application meeting. The subrule also requires that the pre-application meeting take place before a Part 2 application is submitted. This limitation ensures that the Department will have an opportunity to provide the applicant with guidance that will increase the likelihood that the applicant will provide all of the necessary information on the Part 2 application.

67. In response to the comment on subrule 223—48.30(1)(b), *see* App. at 021, *see* response 7. In response to the commenter's question about the requirements for property that is receiving the state credit and not the federal credit, *see* subrule 223—48.30(1)(a); such applicants must be the fee simple owner in order to be considered "eligible taxpayers" as required by the statute.

68. In response to the comment on subrule 223—48.30(4), *see* App. at 021, *see* response 65.

69. In response to the comment on subrule 223—48.30(6), *see* App. at 021, the Department of Cultural Affairs has amended the subrule to address the concerns regarding amendments and the undertaking of unauthorized work.

70. In response to the comment on subrule 223—48.31(4)(a), *see* App. at 021, and the suggestion that giving the Department of Cultural Affairs sole discretion to refuse to register projects may be too far-reaching, the Department disagrees because, under the statute, the decision to register a project is discretionary. Iowa Code section 404A.3(2)(a) (2015) states, "[u]pon review of the application, the department *may* register a qualified rehabilitation project. (Emphasis added).

71. In response to the comment on subrule 223—48.31(6), *see* App. at 021, *see* responses 12 and 27.

72. In response to the comment on subrule 223—48.31(9), *see* App. at 021, it is the Department of Cultural Affairs' position that the proposed subrule properly uses the term "may" because the authority to create a different registration process for small projects is discretionary under the statute, not mandatory. *See* Iowa Code § 404A.3(6) (2015). While the Department plans to implement a simpler registration process for small

projects, absent a statutory requirement, it is best keep the rule regarding this permissive to give the program flexibility.

73. In response to the comment on rule 223—48.32, *see* App. at 021, the language stating that some applicants may need to purchase the property at issue prior to entering into an agreement, does not mean that an "applicant" need not be an "eligible taxpayer" prior to entering into an agreement, as the commenter suggests. Instead, the language on purchases reflects the fact that applicants who are eligible taxpayers because they "will qualify for the federal credit" may not own the building up to this point. However, not all applicants will fall into this category of eligible taxpayers. *See also* response 53.

74. In response to the comment on subrule 223—48.32(1)(c), *see* App. at 022, the budget and the allowable cost overruns are required terms of the agreement, as described in paragraph "c" and as described in Iowa Code section 404A.3(3)(b)(3) (2015). In response to the commenter's question about any applicable ownership period, there is no five-year ownership requirement under the state law.

75. In response to the comment on the rule 223—48.33, *see* App. at 022, *see* response 65.

76. In response to the comment on subrule 223—48.35(1), *see* App. at 022, about how the annual reports will be used, annual reports will be a compliance and economic impact analysis tool.

77. In regards to the comment on the absence of a rehabilitation period in the rules, *see* App. at 022, rehabilitation period is not defined in the statute. The work must be considered a part of the "qualified rehabilitation project" and specified in the applications and agreement to be eligible.

Response to Email and Related Attachments from Norman L. Jones, III, Winthrop and Weinstine (App. 023–037)

78. In response to the letter included as an attachment, *see* App. at 035–037, *see* response 19. In addition, the Department of Revenue has adopted the recommendation in comment 4 of the letter, *see* App. at 037.

Response to Email from Norman L. Jones, III, Winthrop and Weinstine, dated February 4, 2015 forwarded to the Department of Cultural Affairs by Mary Gronen (App. 038–041)

79. In response to item (1) of the email on the Department of Revenue's proposed rules, *see* App. at 039, regarding Department of Revenue subrules 701—42.19(4), 42.19(6), and 42.54(5), *see* response 50.

80. In response to item (2) of the email on the Department of Revenue's proposed rules, *see* App. at 039, regarding Department of Revenue subrule 701—42.54(3)(b)(1), *see* response 19.

81. In response to item (3) of the email, *see* App. at 039–040, regarding subrule 701—42.54(3)(b)(2), *see* response 19.

82. In response to item (4) of the email, *see* App. at 040, regarding the example in 701—52.18(3), the Department has revised the proposed subrule to incorporate the recommendation of the commenter.

83. In response to item (5) of the email, *see* App. at 040, regarding subrule 701—52.18(6)(a), *see* response 50.

84. In response to item (1) of the email on the Historical Division proposed rules, *see* App. at 040, regarding the ownership requirement in proposed rule 223—48.27, ownership is a statutory requirement for "eligible taxpayers" that are not persons that will qualify for the federal credit. *See* Iowa Code § 404A.1(3) and 404A.3(1) (2015); *see also* response 53.

85. In response to item (2) of the email on the Historical Division proposed rules, *see* App. at 040, regarding the language in rule 223—48.31, the proposed rule has been amended to incorporate the recommendation of the commenter.

86. In response to item (3) of the email on Historical Division proposed rules, *see* App. at 040, regarding the scoring criteria in rule 223—48.31(6), *see* responses 9–11 and 27.

87. In response to item (4) in the email on Historical Division proposed rules, *see* App. at 040, regarding the closing period described in rule 223—48.32, *see* response 49.

Response to Email from Bryan Friedman, City of Newton, dated February 10, 2015 (App. 047) and Attached Letter from Robert L. Knabel, City Administrator, City of Newton, dated February 10, 2015 (App. 042–043)

88. The letter states that the proposed rules will hurt projects and that some proposed projects may not be possible if the new rules are put in place; however, the letter does not specify which rules are at issue or why they will hurt or eliminate projects. *See* App. at 042. The letter does mention that projects often rely on several public funding sources. *See* App. at 043. To the extent that the commenter's concern is related to whether expenses paid for with public funding sources are eligible for the tax credit, *see* response 19.

Response to Email from Jack C. Porter dated February 10, 2015 (App. 048) and Attached Letter (App. 044)

89. In response to the questions raised in the letter about proposed subrules 223—48.6(8) and 48.7(8) and the elimination of the reservation system, *see* App. at 044, the rules to which the commenter refers are related to the program as it existed prior to the enactment of 2014 Iowa Acts, House File 2453. "Reserve" was a term used under the prior law to describe the Department of Cultural Affairs' practice of reserving tax credits from a future year's allocation if insufficient credits were available within the current year's cap. This practice caused procedural problems that were the impetus for the 2014 legislation. The reservation system has now been eliminated. Under Iowa Code section 404A.4 (2015), the Department awards only amounts available within its current year statutory cap, with the exception that, if aggregate credit amount is not awarded in a given year, a percentage of those dollars may be carried-forward to the next fiscal year in accordance with section 404A.4. The practice of "reserving" tax credits has been eliminated under the law and the proposed rules reflect that statutory change. *See* also response 59.

90. In response to the questions raised about proposed subrules 223—48.28(5), 48.30(4), 48.31(5), and 48.33(3), regarding the nonbinding nature of the 90–day review period, *see* App. at 044, *see* response 65.

91. In response to the concern that the Department of Cultural Affairs does not offer enough pre-application meeting time slots for applicants to be able to ensure that they are able to make the mandatory appointment, as required by proposed subrule 223—48.29(2), *see* App. at 044, it is the Department's position that the current system provides ample appointment timeslots. The Department offers 12 meeting times each week. There are 6, 1–hour slots available on Tuesdays and Thursdays. In the first six months of program administration since the new law was adopted, the Department's staff conducted more than 50 pre-application meetings and technical assistance plan reviews. All but a few of those meetings were held during the identified Tuesday and Thursday meeting times and coordinated through the on-line scheduler located on the Department's website. When program users could not be reasonably accommodated within the twelve available spots (typically because of out-of-town travel), they were able to request a time more convenient to them.

92. In response to the question raised about why the specific points are not listed in the subrules on scoring criteria, 223—48.31(6) and (7), *see* App. at 044, because the registration application and scoring system are new to the program this year, it is the Department of Cultural Affairs' position that it is best to describe the scoring categories in rule but not the specific points. This will allow the Department to make adjustments for future rounds that are responsive to the market and program-user feedback. The Department will continue to make the registration application available on its website in advance of registration so that applicants will continue to have an opportunity to review the application, including the scoring criteria, prior to the application period.

93. In response to the question raised about why there is a cost overrun limitation in proposed subrule 223—48.32(1), *see* App. at 044, the limitations on cost overruns are a requirement of the statute. *See* Iowa Code § 404A.3(3)(b) (2015). The limitation does not contradict the state law entitling the eligible taxpayer to 25% of his qualified expenditures because the statute states that the eligible taxpayer is "eligible to receive a historic preservation and cultural and entertainment district tax credit in an amount equal to twenty-five percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are *specified in the agreement*." Iowa Code § 404A.2(1) (2015) (emphasis added). The statute requires the agreement to limit the amount of the credit award, including potential cost overruns. Iowa Code § 404A.3(3)(b) (2015). Keep in mind that the agreement limits the amount of cost overruns that are eligible for the tax credit; it does not prevent the applicant from spending additional dollars, beyond the statutory cost overruns, on the project. The statutory restriction encourages better upfront planning and limits the state's financial exposure on projects that go substantially over budget.

94. In response to the question about the inability to amend project completion date under proposed subrule 223—48.32(2), *see* App. at 044, the proposed subrule does not prohibit all amendments to completion date, only amendments that would violate the statutorily prescribed time limits. According to the subrule, "the commencement date, the completion date, and the agreement termination date may not be amended if such an

amendment would violate the statutorily prescribed time limits" as described in Iowa Code section 404A.3(3) (2015). The legislature specifically limited the project completion timeframe. The proposed rule has been amended to clarify that this restriction is statutory.

95. In response to the question regarding why there is an examination waiver provision identified in proposed subrule 223—48.33(2)(d), this waiver provision is statutory. *See* Iowa Code § 404.3(5)(b).

96. In response to the comment on how fees, as referenced in proposed subrule 223—48.34, are budgeted, *see* App. at 044, the fees are intended to be used for the effective administration of the program. With the help of these dollars, in the last 18 months, the Department of Cultural Affairs has increased the number of full-time employees that administer the state historic tax credit program; the program has been moved on-line for greater efficiency and transparency; and staff has established a formal system for meeting with applicants to provide more in-depth assistance to program users. The Department has amended the proposed rules to include the fee schedule. *See* response 18.

Response to Email from Thomas J. Frantz, Frantz Community Investors, dated February 10, 2015, (App. 050) and attached letter (App. 045–046)

97. Items (1) and (2) of the letter, *see* App. at 045, do not require a response.

98. In response to Item (a) of the letter regarding cost overruns, *see* App. at 045, *see* response 93.

99. In response to Item (b) of the letter regarding qualified rehabilitation expenditures, *see* App. at 045, *see* response 19.

100. In response to Item (c) of the letter regarding the 90–day closing period, *see* App. at 045, *see* response 49.

101. In response to Item (d) of the letter regarding the annual application period, *see* App. at 046, *see* response 8. In response to the comment that much of the requested information may not be available during registration and the Part 3 application should provide sufficient opportunity for the Department to ensure the project meets all of the program standards, while the Department agrees that the Part 3 application does provide an opportunity to review projects for compliance, the goal of requiring more information through the registration application process is to ensure that projects are ready to proceed as soon as possible and are more likely to be successfully completed. In addition, the information required is related to the statutory requirements under Iowa Code section 404A.3 (2015). *See* response 9.

Response to Email from Jennifer James, dated February 10, 2015 (App. 049)

102. In response to the comments regarding the scoring criteria set forth in the rules, *see* App. at 049, *see* responses 9–11 and 27.

103. In response to the comments regarding limiting Part 1 and Part 2 applicants to fee simple owners and others that will qualify for the federal tax credit program, *see* App. at 049, *see* responses 20, 133, and 164.

104. In response to the comment regarding the need for public access to the Part 1 applications, *see* App. at 049, applications are subject to Iowa Code chapter 22.

Response to Letter from Maurice Jones, Economic Development Director, City of Dubuque, dated February 10, 2015 (App. 051–053)

105. In response to Item (1) of the letter regarding cost overruns, *see* App. at 051, *see* response 93.

106. In response to Item (2) of the letter regarding the definition of qualified rehabilitation expenditures, *see* App. at 052, *see* response 19.

107. In response to Item (3) of the letter regarding the application/agreement process and timing, *see* responses 9–11, and 27 for a discussion of the scoring criteria. *See* response 49 for a discussion of the closing period, and *see* response 100 for a response to the comments on the Part 3 application as a compliance tool.

Response to Letter from James A. Beal, McGladrey LLP, dated February 10, 2015 (App. 055–059)

108. *See* response 19.

Response to Comments from Jennifer James at February 11, 2015 Public Hearing (App. 060–061)

109. In response to comment (1) regarding limiting Part 1 and Part 2 applicants to fee simple owners and others that will qualify for the federal tax credit program, *see* App. at 060, *see* responses 20, 133, and 164.

110. In response to comment (2) regarding delays in approving state applications, *see* App. at 060, *see* responses 8 and 65.

111. In response to comments (3) and (4), regarding the scoring criteria set forth in the rules, *see* App. at 060–061, *see* responses 9–11 and 27.

112. In response to the comment regarding the need for public access to the Part 1 applications, *see* App. at 061, *see* response 104.

Response to Comments from Andrew Lorentzen at February 11, 2015 Public Hearing (App. 061)

113. In response to the comment on the scoring criteria, *see* response 27.

Response to Comments from Brad Epperly at February 11, 2015 Public Hearing (App. 061–062)

114. The comment suggests that the proposed rules do not comply with the statute or the federal rules, but does not specify what rule is at issue or why the commenter believes it is inconsistent with the federal law. If the comment is in regard to the definition of qualified rehabilitation expenditures, *see* response 19.

Response to Comments from Tim Rypma at February 11, 2015 Public Hearing (App. 062)

115. The commenter did not express concerns about any specific issues or rules. Therefore, no response is necessary.

Response to Comments from John Gronen at February 11, 2015 Public Hearing (App. 062–063)

116. The commenter expressed concerns about the IRC section 47 piece of the rules but did not raise any particular issues. To the extent the commenter is concerned about the definition of qualified rehabilitation expenditures, *see* response 19.

Response to Comments from Jill Connors, City of Dubuque, at February 11, 2015 Public Hearing (App. 063–064)

117. In response to the comment regarding the QRE basis question, *see* response 19.

118. In response to the comment on the scoring criteria and, in particular the preference given to rural projects, *see* responses 9–11 and 27.

119. In response to the comment on the 90–day closing period, *see* response 49.

Response to Comments from Kris Saddoris, Hubbell Realty, at February 11, 2015 Public Hearing (App. 064–065)

120. The commenter expressed the importance of understanding how the credit is leveraged as well as the layers of capital stack involved in typical projects. To the extent the commenter is concerned about the proposed rules on qualified rehabilitation expenditures, *see* response 19.

Response to Comments from Russ Behrens at February 11, 2015 Public Hearing (App. 065)

121. The commenter stressed that the layering piece of these projects is very important in rural areas and expressed appreciation for the tiebreaker scoring preference for rural projects. To the extent the commenter is concerned about the proposed rules on qualified rehabilitation expenditures, *see* response 19.

Response to Comments from Angela Herrington at February 11, 2015 Public Hearing (App. 065, 068–069)

122. The Departments are unable to tell which part of the rules the commenter would like the Departments to reconsider. *See* App. at 065. To the extent the commenter is concerned about the proposed rules on qualified rehabilitation expenditures, *see* response 19.

123. The commenter made a separate comment regarding the need for urgency on behalf to the Departments. *See* App. at 068-069. The Departments recognize the importance of this program as a financing source and is working as quickly as possible to carefully consider all of the public comments received and make appropriate revisions to the proposed rules.

Response to Comments from Bryan Friedman, City of Newton at February 11, 2015 Public Hearing (App. 065–066)

124. The commenter did not specify a specific rule or explain how he thinks the Department is proposing to calculate the credit and why that would hinder specific projects. To the extent the commenter is concerned about the proposed rules on qualified rehabilitation expenditures, *see* response 19.

Response to Comments from David Vos, Alexander Company, at February 11, 2015 Public Hearing Dated (App. 066)

125. The comment does not require a response.

Response to Comments from Jake Christensen, Christensen Development, at February 11, 2015 Public Hearing (App. 066–067)

126. In response to the comment on the fee simple owner issue, *see* App. at 067, *see* response 20.

127. In response to the comment on the QRE issue, *see* App. at 067, *see* response 19.

Response to Comments from Jack Porter, JC Porter Consulting, at February 11, 2015 Public Hearing (App. 067)

128. Mr. Porter raised the same issues at the public hearing that he raised via email on February 10, 2015. *See* responses 89–96.

Response to Comments from Thomas Frantz, Frantz Community Investors, at February 11, 2015 Public Hearing (App. 068)

129. In response to the comments on the definition of qualified rehabilitation expenditures, *see* response 19.

130. In response to the comment on cost overrun limitations, *see* response 93.

Response to Comments from Jennifer Kakert, Financial District Properties, Davenport, Iowa at February 11, 2015 Public Hearing (App. 068)

131. In response to the comment encouraging the state and federal programs to match, to the extent the comment is in regards to how qualified rehabilitation expenditures are calculated, *see* response 19.

Response to Comments from Carol Bower at February 11, 2015 Public Hearing (App. 069)

132. The commenter explained that projects often involve seven or eight layers of financing and asked for support on the QRE issue. The commenter has not identified a specific rule or recommendation. If the comment is related to the effect of public financing sources on the calculation of qualified rehabilitation expenditures, *see* response 19.

Response to Email and Related Attachment from Ashley Aust, Corporate Counsel, Hubbell Realty, dated February 12, 2015 (App. 071–073)

133. In response to the recommendations in the attachment identified as Issue 2, *see* App. at 071, the Department of Cultural Affairs has incorporated the commenter's recommended change to the introductory paragraph of rule 223—48.27. The Department has not incorporated the recommended changes to subrules 223—48.28(2)(b) and 48.30(1)(b). The recommendation would permit an applicant to submit a copy of the federal Part 1 and Part 2 application that have not yet been approved. It is the Department's responsibility to determine whether an applicant is an eligible taxpayer under the law, including whether the applicant "will qualify" for the federal credit. *See* Iowa Code § 404A.1(3) and 404A.3(1) (2015). Receiving proof that the applicant has submitted a federal application does not help the Department verify whether the applicant "will qualify" for the federal credit. Therefore, the proposed change has not been incorporated.

134. In response to the recommendations in the attachment identified as Issue 3, *see* App. at 071–072, regarding Part 1 and Part 2 amendments, the Department of Cultural Affairs has incorporated the commenter's recommendation into new proposed subrule 223—48.28(8), which applies to the Part 1 application process, and 223—48.30(6), which applies to the Part 2 application process.

135. In response to recommendations in the attachment identified as Issue 4, *see* App. at 072, *see* response 22.

136. In response to the recommendations in the attachment identified as Issue 5, *see* App. at 072–073, regarding notification about incomplete information, the Department of Cultural Affairs has incorporated both of the commenter's recommendations into the proposed rules.

Response to Email from David Adelman, Cornerstone Government Affairs, dated February 16, 2015 and Related Attachment from Wayman C. Lawrence, Foley & Lardner (App. 074–076)

137. *See* response 19.

Response to Emails and Related Attachments from Norman L. Jones, III, Winthrop and Weinstine, (App. 077–110)

138. The commenter, with the support of the Smart Growth Coalition, provided several examples of different ways that real estate transactions are commonly structured to transfer public funding from a government entity to intermediary entities and finally to the entity that owns the building. The commenter also provided an explanation about why he believes the use of public funding in each of these transactions should not reduce the basis of the property or the basis of the tax credit. These examples highlighted the complexity of historic preservation real estate ventures. While the Departments and the Smart Growth Coalition discussed the possibility of including these examples in the Department of Revenue's rules, the Departments have determined that, as illustrated by the examples, the fact patterns of these transactions vary greatly from case to case. Therefore, the details of each transaction must be analyzed independently for each project to determine the impact of public financing on the amount of the tax credit award. As such, the Department will not include examples at this time, and instead will analyze each project under the Iowa statute and IRC section 47 and its related regulations, which are incorporated into Iowa Code section 404A.1 by reference. *See* response 19 for further explanation.

Response to Email from Mary Gronen and Related Attachments from David Vos, forwarded by Mary Gronen, dated March 1, 2015 (App. 111–125)

139. In response to Mary Gronen's comment "We keep getting asked this same question and are not sure how to answer it, so would appreciate guidance from the commenter. Why is it that the admin rules deviate so much from the legislation that was passed?" *See* App. at 111. The Departments are uncertain what specific aspects of the rules the commenter is referring to. Regardless of which rules the commenter is referencing, the Departments disagree with this statement. To the extent the Departments have received public comments about specified administrative rules, the Departments have responded in this document and by making amendments to the proposed rules and by explaining the statutory support for the proposed language. If there are members of the public that are communicating questions to the commenter and have not communicated those questions to the Departments, the Departments would encourage those members of the public to direct their inquiries to the Departments.

140. In response to the comment on Capitalization in the attachment, *see* App. at 112, the Departments' rules are edited by the Iowa Administrative Code Editor prior to publication and conform to the style guidelines of the Iowa Administrative Code.

141. In response to the comment, "Tenant Master Lease?", in the attachment, *see* App. at 113, the Department of Cultural Affairs is unclear what the commenter is recommending. Therefore, the Department cannot substantively address this comment.

142. In response to the recommended change to the definition of "Historically significant," in proposed rule 223—48.22, *see* App. at 113, the department has amended the proposed definition to state "designated as contributing to the significance of a district…".

143. The Department of Cultural Affairs has adopted the commenter's recommendation that the phrase "of a maximum" be deleted from rule 223—48.23. *See* App. at 114. The contract will establish the maximum tax credit that may be claimed. Iowa Code § 404A.3(3)(b)(1) (2015). Subject to that maximum contract figure, the ultimate amount of the tax credit issued shall be determined by the Department's statutory mandate to verify compliance with the statute, rules, and contract and the Department's statutory mandate to verify the amount of final QREs. Iowa Code §§ 404A.2(1), 404A.3(5)(c) (2015).

144. The Department of Cultural Affairs has not incorporated the commenter's recommendation that the word "allowed" be used instead of "specified", *see* App. at 114, because the term specified is used in the statute. *See* Iowa Code § 404A.2(1) (2015).

145. The Department of Cultural Affairs has not incorporated the commenter's recommendation that, under subrule 223—48.24(1), an applicant should have the right to agree to a reduced award within the cap limit in the event that insufficient funding is available, rather than having to wait until the following year to re-register. *See* App. at 114. In such situations, the Department will attempt to fund fully, to the extent permitted by Iowa Code chapter 404A, other projects that exceed the minimum score and/or small projects.

146. The Department of Cultural Affairs has incorporated the commenter's suggestion that the term "estimated" be changed to "maximum" in subrule 223—48.25(3)(e). *See* App. at 115. The contract establishes the maximum tax credit that may be awarded. *See* response 143. This is supported by the statute and is necessary to manage the aggregate cap. *See* Iowa Code § 404A.4(1)(a) (2015). The statute and rules no longer permit the Department to make future reservations or permit supplemental tax credit claims from future fiscal year tax credit allocations.

147. The Department of Cultural Affairs has not incorporated the commenter's suggestion that subrule 233—48.28(5) be amended so that projects with an approved federal Part 1 be reviewed by the Department in 30 days rather than 90 days. *See* App. at 116. While the Department will make best efforts to review applications quickly, there is no 30–day timeline requirement in the statute. *See* response 65 for further response.

148. The Department of Cultural Affairs has added new subrule 223—48.28(8), which describes amendments to Part 1 applications. The new subrule addresses the commenter's concern about possible ownership changes under subrule 223—48.28(7). *See* App. at 117.

149. The commenter asked why an applicant must schedule a pre-application meeting for no *fewer* than 30 days after the Part 1 application in submitted. *See* App. at 117. The reason subrule 223—48.29(2) requires at least 30 days between the Part 1 application submission and the pre-application meeting is because the Department needs time to review the Part 1 application. *See* response 66 for further explanation.

150. The Department of Cultural Affairs has not incorporated the commenter's recommendations related to subrule 223—48.30(4), *see* App. at 118, *See* response 147.

151. The Department of Cultural Affairs has incorporated the commenter's recommendations related to subrule 223—48.30(5). *See* App. at 118.

152. The Department of Cultural Affairs has addressed the commenter's question about subrule 223—48.30(6) by incorporating language that was proposed by another commenter. *See* App. at 118, *see* response 21.

153. The Department of Cultural Affairs has incorporated the commenter's recommendations related to subrule 223—48.31(1)(b) by changing the phrase "or otherwise qualified for the federal credit" to "not otherwise an eligible taxpayer". *See* App. at 119.

154. In regards to the comments on subrule 223—48.31(4). *See* App. at 119–120, *see* response 22.

155. In regards to the comments on the additional evaluation criteria in subrule 223—48.31(7) the Department is changing its language to clarify that the tiebreaker criteria will be applied when there is a tie score and the Department only has enough tax credits to fund less than all of the projects that received that same score. However, if there is a tie and the Department has sufficient tax credits to fund all tied projects, the tiebreaker criteria will not apply. *See* App. at 120.

156. The Department of Cultural Affairs has not incorporated the recommendation that the term "may" be changed to "shall" in subrule 223—48.31(8), *see* App. at 121, because under the statute, registering a project is discretionary. *See* Iowa Code § 404A.3(2)(a) (2015) ("the department may register a qualified rehabilitation project…").

157. In response to the comment on the need for a longer closing period, *see* App. at 121, the Department of Cultural Affairs has amended rule 223—48.32 to increase the closing period. *See* response 88 for further explanation.

158. The Department of Cultural Affairs has not incorporated the recommended changes to the cost overrun language in subrules 223—48.32(1)(c) (2) and (3), *see* App. at 122, because the recommended language is contrary to the statute and would result in larger allowable cost overruns than what the statute prescribes. *See* Iowa Code § 404A.3(3)(b)(3) (2015).

159. In response to the recommendation that subrule 223—48.33(3) be amended to a 30–day review period, *see* App. at 123, the Department of Cultural Affairs disagrees with the proposed changes. *See* response 147.

160. In response to the recommendation that the language in subrule 223—48.35(3)(b), should be replaced with the language in the statute, *see* App. at 123, the commenter should be aware that the language that the commenter recommended removing and replacing is identical to the language in the statute. *See* Iowa Code § 404.3(4)(c)(2) (2015).

161. The Department of Cultural Affairs has not incorporated the recommendation that the terms "material" and "uncured" be added to the definition of "Prohibited activity" in subrule 223—48.35(3)(b)(1), *see* App. at 124, because the definition of "Prohibited activity" as currently stated in the proposed rule is identical to the definition stated in the statute. *See* Iowa Code § 404A.3(4)(c)(3)(a) (2015).

Response to Email from Rebecca McCarley dated March 10, 2015 (App. 126–127)

162. In response to the comments on the need for a specified rehabilitation period, *see* App. at 126–127, *see* response 77.

Response to Email and Related Attachments from Larry James Jr., Faegre Baker Daniels LLP, dated March 11, 2015 (App. 128–130)

163. In response to the comments on the Department of Revenue's proposed rules on "qualified rehabilitation expenditures," *see* App. at 129–130, *see* response 19.

Response to Email and Related Attachments from Smart Growth Coalition, dated March 22, 2015 (App. 131–133)

164. In response to the comments on and proposed subrules 223—48.28(2) and 48.30(1) regarding the application requirements for "eligible taxpayer" who "will qualify for the federal credit," *see* App. at 132–133, *see* response 133. In addition, it is the Department of Cultural Affairs' position that requiring an approved federal application where applicable will make the state application process more efficient because uncertainty regarding the federal application will be reduced. This should expedite the state application review process.

Response to Email from Jason Stone, Davis Brown Law Firm, dated March 23, 2015 (App. 134–135)

165. In response to item "A" of the email regarding the reference to Treasury Regulation § 1.48-1(e)(2) in Department of Revenue subrule 701—42.54(3)(a), *see* App. at 134, the Department has revised the proposed subrule to reference IRC section 47 for projects in general. The reference to Treasury regulation 1.48-1(e)(2) remains in the rule for nonprofit applicants, which is consistent with Iowa Code section 404A.1(6).

166. In response to item "B" of the email, regarding the use of the term "nonprofit" rather than "tax-exempt entity" in proposed subrule 701—42.54(3)(b), *see* App. at 134, the term nonprofit is used because Iowa Code section 404A.1(4) defines "nonprofit organization" as "an organization described in section 501 of the Internal Revenue Code unless the exemption is denied…." To provide clarity, the Department revised the proposed subrule to add a reference to the statutory definition.

167. In response to item "C" of the email, regarding concern that proposed subrule 701—42.54(3)(b) may be overly broad, *see* App. at 134, the Department has revised the language to clarify that it applies to a nonprofit organization and others only if they are not eligible for the federal credit.

Response to Email and Related Attachments from Mary Ottoson, Hobart Historic Restoration, dated March 23, 2015 (App. 136–139)

168. In response to the comment on response 96 of this document, *see* App. at 137, *see* response 65.

169. In response to the comment on response 65 of this document, *see* App. at 137, the federal section 106 process is not the same as the state historic tax credit application process and its requirements are inapplicable to the state historic tax credit program. In response to the suggestion that the Department of Cultural Affairs should allocate some of the funding available for tax credits to hire additional staff, the Department has no statutory authority to do so. *See generally*, Iowa Code chapter 404A.

170. In response to the comment on page 27, 39, and 40 of the Department of Cultural Affairs' rules and the 90-day review period, *see* App. at 137, *see* response 65.

171. In response to the comment provided under the heading "Fee-Simple Ownership and Scoring," *see* App. at 138, the ownership requirements of other state tax credit programs are based on the statutory requirements of those programs. The state historic tax credit program, as codified in Iowa Code chapter 404A, as different requirements than other programs. *See also* responses 20, 27, 133, and 164.

172. The Department of Cultural Affairs has not incorporated the recommended changes to subrule 223—48.25(2) and 48.27(2), *see* App. at 138, because the explanation that the commenter recommends adding is included elsewhere in the rules. *See* subrules 223—48.28(2) and 48.30(1).

173. In response to the comment referring to the Smart Growth Coalition language submitted on March 23, 2015, *see* App. at 131–133, *see* response 164.

174. In response to the comments provided under the heading, "Part 2 and Amendments," *see* App. at 137–138, the majority of the comments reference rules that only apply to projects for which applications were approved and tax credits were reserved prior to July 1, 2014, therefore, the commenter's recommended revisions are unnecessary. In response to the comment on subrule 223—48.30(5)(c), *see* App. at 138, the subrule addresses the possibility of amendments, as does subrule 223—48.30(6), in greater detail.

175. In response to the comments provided under the heading "Government Funding, Investors, and QREs," *see* App. at 139, *see* response 19. Projects will be reviewed on a case-by-case basis.

176. In response to the comment on subrule 223—48.6(1)(c)(2), *see* App. at 139, for projects for which part 2 applications are approved and agreements are entered into on or after July 1, 2014, the relevant rules begin with 223—48.21.

177. In response to the comment provided under the heading, "Scoring and Previous Applications," *see* App. at 139, *see* responses 12 and 27.

178. In response to the comment provided under the heading, "Scoring and Small Projects," *see* App. at 138, while the small project application process will be separate, applicants will still be required to demonstrate project-readiness. *See also* response 72.

179. The Department of Cultural Affairs has not incorporated the commenter's recommendation that it replace the word "fully" with "adequately" in subrule 223—48.24(1), *see* response 145.

Response to Email and Related Attachments from David Vos, dated March 23, 2015 (App. 140–144)

180. The Department of Cultural Affairs has not incorporated the commenter's recommendation that it replace the word "fully" with "adequately" in subrule 223—48.24(1), *see* App. at 141. *See* response 145.

181. In response to the recommendation that the Department of Cultural Affairs add "or entity" after "person" in proposed rule 223—48.27, *see* App. at 142, the change is unnecessary because "person" is a statutorily defined term that includes legal entities. *See* Iowa Code § 4.1(20).

182. The Department of Cultural Affairs has not incorporated the commenter's proposed revision to subrule 223—48.31(4)(a), *see* App. at 143. *See* response 22 for further explanation.

183. The Department has deleted the word "of" in proposed rule 223—48.32 based on the commenter's recommendation. *See* App. at 144.